

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In re the Matter of Application of)	S.B.C. ORDER NO. 565
)	
PACIFIC BOAT ENTERPRISES, LLC)	DOCKET NO. B-78869
d/b/a MOSQUITO FLEET)	
)	
For a Certificate of Public Convenience)	
and Necessity to Operate Commercial)	FINAL ORDER GRANTING
Ferry Service)	APPLICATION
.....)	

I. SYNOPSIS

1 The Commission grants a certificate of authority to operate commercial passenger
ferry service out of Everett, Washington, to Pacific Boat Enterprises, LLC d/b/a
Mosquito Fleet (Mosquito Fleet or Applicant).¹

A. Procedural Summary

2 Mosquito Fleet filed Application No. B-78869 with the Commission on
December 15, 1999. The Applicant seeks a Certificate of Public Convenience and
Necessity to furnish passenger, freight, and excursion service between Everett and
Friday Harbor, with flag stops at Rosario and Roche Harbor.

3 The Commission previously certified the Applicant to provide commercial ferry
services under the name Mosquito Fleet Enterprises, Inc. That entity has ceased to
provide service.

4 On January 20, 2000, San Juan Express, Inc. and its parent corporation, Clipper
Navigation, Inc., protested the application. On January 18, 2000, the protest was
withdrawn.

5 On May 22, 2000, the Commission issued a Notice of Brief Adjudication, which
provided the parties with an opportunity to submit evidentiary documents and a
written statement and set the time for the parties to make oral statements.

¹ In the light of the fact that the application is uncontested and the order is not adverse to the
interests of any party, the Commission will enter a final order in this matter.

6 On April 6, 2000, the Washington State Ferries (WSF) filed with the Commission its
Position on Waiver of the Ten-Mile Restriction, stating that it does not object to a
waiver of the ten-mile restriction.

7 On June 15, 2000, the Commission convened a hearing in Docket No. B-78869 at the
offices of the Washington Utilities and Transportation Commission in Olympia,
Washington, before Administrative Law Judge Tre Hendricks pursuant to due and
proper notice to all interested parties.

B. Appearances

8 Michael W. Bennett, Principal, Everett, represented Pacific Boat Enterprises, LLC
d/b/a Mosquito Fleet.

II. DISCUSSION

9 In approving the application of Mosquito Fleet, the Commission waives the ten-mile
restriction, finds that the applicant is fit to provide the service it proposes, and finds
that the public necessity and convenience require the proposed service.

A. Waiver of Ten-Mile Restriction

10 RCW 47.60.120 prohibits new private ferry crossings within ten miles of a crossing
already operated by the WSF. However, the Commission may grant a waiver of the
ten-mile restriction if it finds that the waiver is not detrimental to the public interest.
RCW 47.60.120(3).

11 According to RCW 47.60.120, “In making a decision to waive the ten-mile
restriction, the commission shall consider, but is not limited to, the impact of the
waiver on transportation congestion mitigation, air quality improvement, and the
overall impact on the Washington state ferry system.”

12 On December 27, 1999, the WSF filed its Position on Waiver of the Ten-Mile
Restriction, in which it stated that it would not oppose the application.

13 The service as proposed by the Applicants will provide an alternative means of
transportation that would lessen to some degree the burden on the WSF routes to
Friday Harbor and Rosario. In addition, the proposed route could decrease the
automobile traffic between Everett and Anacortes. The result of fewer motor vehicles
on the road is less pollution and improved air quality.

14 The Commission, therefore, grants to Mosquito Fleet a waiver of the ten-mile
restriction for the purposes of furnishing services as proposed in Application

No. B-78869.

B. Fitness of the Applicants to furnish the proposed service.

15 Before the Commission issues a certificate of public convenience and necessity, an applicant must show that it has the financial resources to operate the proposed service for at least twelve months. *RCW 81.84.020(2)*. That determination is based on the submission by the applicant of a pro forma financial statement of operations. *Id.* In addition, the statute provides that the determination by the Commission must be based on, but not limited to, the following factors:

Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing service; a statement of the total assets on hand of the Applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in providing commercial ferry service.

Id. WAC 480-51-030(1) also requires that the applicant address these requirements in its application.

16 Mosquito Fleet proposes to use the vessel “Orca Song,” a 150-passenger vessel owned by Allen Marine Tours, Inc., of Alaska, and leased by Mosquito Fleet. The Orca Song is presently docked at the Port of Everett, which is where Mosquito Fleet proposes to continue to dock the vessel. In addition, Mosquito Fleet represented that it has secured agreements to dock the vessel in Friday Harbor and Rosario.

17 Mosquito Fleet demonstrated in its application and at hearing that it has sufficient financial resources to operate the services it proposes for at least twelve months. Furthermore, Mr. Bennett has prior experience as an owner of a commercial passenger ferry operation, the now defunct Mosquito Fleet Enterprises, Inc.

18 The Commission finds that Mosquito Fleet is fit to provide the proposed services. Mosquito Fleet addressed the required statutory elements in its application and at hearing, demonstrating that they have sufficient assets, financial resources, and experience to operate the proposed service for at least twelve months. Moreover, the Shipper Support Statements and testimony by Mr. Bennett show that the proposals for docking facilities, the proposed vessel, and the ridership forecasts satisfy the statutory and Commission requirements to issue a certificate.

C. Public Convenience and Necessity

- 19 The Commission may grant a certificate to operate commercial ferry service when the public convenience and necessity require such a service. *RCW 81.84.010(1)*. The public convenience and necessity generally is demonstrated by the testimony of witnesses who would use the service if available. However, the Commission may consider written statements supporting an unopposed application for a certificate in a territory that is not presently served. *In re Mosquito Fleet Enterprises, Inc., Application No. B-78420, Order S.B.C. No. 519 (March 1996)*.
- 20 Mosquito Fleet submitted shipper support statements, in which representatives of the Port of Everett, the Everett Area Convention and Visitor Bureau, Everett Parks and Recreation, and the Everett Area Chamber of Commerce expressed their support for Mosquito Fleet's application.
- 21 Therefore, the Commission finds that the public convenience and necessity require the proposed service.

III. FINDINGS OF FACT

- 22 1) Pacific Boat Enterprises, LLC d/b/a Mosquito Fleet seeks a Certificate of Public Convenience and Necessity to furnish passenger, freight, and excursion service between Everett and Friday Harbor, with flag stops at Rosario and Roche Harbor.
- 23 2) The Commission notified all certificated commercial ferry operators of the application.
- 24 3) The Commission previously certified the Applicant to provide commercial ferry services under the name Mosquito Fleet Enterprises, Inc. That entity has ceased to provide service.
- 25 4) On January 20, 2000, San Juan Express, Inc. and its parent corporation, Clipper Navigation, Inc., protested the application. On January 18, 2000, the protest was withdrawn. No other protests were filed.
- 26 5) The Applicant proposes to use the vessel "Orca Song," a 150 passenger vessel owned by Allen Marine Tours, Inc., of Alaska, and leased by Mosquito Fleet.
- 27 6) The Orca Song is presently docked at the Port of Everett, which is where Mosquito Fleet proposes to continue to dock the vessel. Mosquito Fleet represented that it also has agreements to dock the vessel in Friday Harbor and Rosario.

- 28 7) The Applicant submitted shipper support statements, in which representatives of the Port of Everett, the Everett Area Convention and Visitor Bureau, Everett Parks and Recreation, and the Everett Area Chamber of Commerce expressed their support for Mosquito Fleet's application and stated that there is need for the proposed service.
- 29 8) No other operator holds a certificate to furnish, or has applied for a certificate to furnish, commercial passenger ferry service for the routes proposed by the Applicant.
- 30 9) WSF does not object to the Commission waiving the ten-mile restriction as it applies to the route proposed by the Applicant.

IV. CONCLUSIONS OF LAW

- 31 1) The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of this application.
- 32 2) The Commission has the authority to grant a waiver of the ten-mile restriction pursuant to RCW 47.60.120.
- 33 3) The Applicant is fit, willing, and able to provide the service it proposes, as required by chapter 81.84 RCW and chapter 480-51 WAC.
- 34 4) The service proposed by the Applicant is required by the public convenience and necessity, which satisfies RCW 81.84.010(1).
- 35 5) There is no existing certificate holder serving the requested territory within the meaning of RCW 81.84.020. Granting the application is not barred by the restrictions in RCW 81.84.020(1) or RCW 47.60.120.

V. ORDER

THE COMMISSION ORDERS That

- 36 1) In accordance with RCW 47.60.120, the ten-mile restriction is waived as it applies to the service proposed by Seattle Ferry Service, LLC d/b/a Seattle Ferry Service and Seattle Harbor Tours, Limited Partnership.
- 37 2) Application No. B-78869 of Pacific Boat Enterprises, LLC d/b/a Mosquito Fleet for a certificate of public convenience and necessity is granted.

DATED at Olympia, Washington, and effective this day of August, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

NOTICE TO ALL PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).